

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE TWENTY SIXTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT APPEAL NO : 1427 of 1997

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated
19/11/1997 in WP NO : 3577 OF 1993 on the file of the High Court.)

Between:

- 1 The Chief Engineer, Electricity, A.P.S.E.Board, Warangal Zone, Warangal.
- 2 The Superintending Engineer, A.P.S.E.B., Warangal.
- 3 A.P.S.E.Board, rep. by its Member secretary, vidyuth soudha, somajiguda,
Hyderabad.

..... APPELLANTS

(Respondents 1, 2 and 4)

AND

Smt. G.Mythili.

(Respondent No.3 in writ petition is not a
necessary party in the writ appeal.

.....RESPONDENT

(PETITIONER)

Counsel for the Appellants:MR.S.RAVINDRANATH

Counsel for the Respondent: MR.S.RAMACHANDRA RAO

The Court made the following :

HON'BLE MR. JUSTICE BILAL NAZKI
AND
HON'BLE MR. JUSTICE P.S. NARAYANA

W.A.NO. 1427 OF 1997

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JUDGMENT: (Per Hon'ble Mr. Justice Bilal Nazki)

This is a writ appeal against the judgment passed by a learned single Judge of this Court in W.P.No. 3577 of 1993, dt. 19.11.1997. Respondents 1, 2 and 4 in the writ petition have filed this appeal. The parties will be referred to as they appeared before the writ court.

The writ petitioner joined the service of the Board on 3.8.1982. She was working in the establishment of the 1st respondent till 31.8.1989. During this period she was paid daily wages at the rate of Rs.15/-, Rs.20/ and Rs.25/- for different periods. The petitioner was

asked by the 1st respondent orally not to report for work with effect from 1.9.1989. Therefore she filed W.P.No. 12559 of 1989. The Court, by an interim order, directed the 1st respondent in the writ petition to continue the petitioner in service till further orders. The writ petition was finally disposed of on 24.3.1982 directing the respondents to consider the claim of the petitioner for absorption as a Typist on regular basis. Since the direction was not complied with, the petitioner approached the Conciliation Officer-Assistant Commissioner of Labour, Warangal. The Conciliation Officer, after examining the claim of the petitioner, directed the first respondent to maintain status quo and to continue the petitioner as job typist and also take necessary steps for absorption of her services on regular basis in terms of the order passed in W.P.No. 12559 of 1989. After that the 1st respondent addressed a letter on 18.7.1990 requesting the member secretary of the Board to consider the representation of the petitioner for absorption of her services as regular typist in terms of G.O.Ms.No. 212, dt. 22.4.1994. Since the petitioner's services were not regularized despite the direction issued by the Conciliation Officer, the writ petition was filed.

The respondents contested the claim of the petitioner before the learned single Judge and submitted that the petitioner joined as job typist on 3.8.1982 and since then she had been working in that position because of the orders of the Board and by the Court. The learned single Judge noted that the petitioner was fully qualified to be absorbed on regular basis as a typist and therefore she could not be kept hanging on ad hoc basis as a job typist for more than 15 years. However, the respondents submitted before the learned single judge that the petitioner was not qualified to be appointed as typist inasmuch as she was not a graduate whereas the rules require passing of a bachelors degree for appointment to the post of typist. Other ground that was taken before the learned single Judge was that there was a bar for recruitment and therefore the petitioner could not be appointed on regular basis. Taking note of the submission that the petitioner was not qualified, the learned single Judge noted,

“It is true that in the counter affidavit in para-4 it is stated that the petitioner is not a graduate. It is also claimed that the claim of the petitioner that she worked with effect from 3.8.1982 in the establishment of the first respondent is also not correct. I should state that the affidavit filed by the Deputy Manager (Legal) is very vague in disclosing material particulars. The Board is a statutory authority which is required to disclose the facts correctly and it would not be fair for it to sit on fence merely denying the assertions made by the petitioner. It is not the case of the Board that the petitioner did not work in the establishment of first respondent. If this is the admitted position then the Board should have disclosed from which date the petitioner started working, but that was not disclosed for the reasons best known to the Board. Similarly, the Board has not disclosed in the counter what was the prescribed qualification when the petitioner made entry into the services on 3.8.1982. The Board having extracted work from the petitioner as Typist for 15 long years, without demur, cannot be permitted to say now that the petitioner is not qualified to be appointed to the post of Typist. Added to this, the first respondent himself as well as an impartial statutory authority under the Industrial Disputes Act, -the Conciliation Officer have recommended for absorption of the services of the petitioner as Typist after considering the merits of the claim put-forth by the petitioner. Added to this, the Board itself framed a scheme embodied in B.P.Ms.No. 228, dt. 27.1.1997 to absorb the services of the personnel working as ex-casual labourers and contract labourers. Therefore, the Board is under legal obligation to consider the claim of the petitioner for absorption not only under the aforementioned B.P.Ms.No. 228, but also having regard to the fact that the petitioner has been continuously working for 15 long years and if the Board prefers to continue the services of the petitioner on the ad hoc basis till her retirement, that would certainly violate the postulates of Article 14 of the Constitution.”

Now the only question is whether a direction could be given for regularization of the petitioner who was not qualified to hold the post, even though she had been working on ad hoc basis for 15 years. In this connection reliance may be made to a judgment of the Supreme

Court reported in *Ashwani Kumar and others Vs. State of Bihar and others* . The Supreme Court held that before ordering regularization, the Court should be satisfied that two conditions are met. The first condition is that appointment in question should be made against a clear vacancy and the second condition is that such appointment should be made in accordance with regulations, which would otherwise mean that the candidate should have basic qualifications because a candidate who does not have basic qualifications cannot dream of getting selected even through selection process. This judgment was followed by a Division Bench of this Court in W.A.No. 1556 of 1997. Since the petitioner admittedly had not the basic qualifications and even if she had sought appointment as a regular candidate, she would be knocked out at first stage because she did not have the basic qualifications.

On the other hand, the learned counsel for the writ petitioner relied on judgments of the Supreme Court reported in *Secretary, Haryana State Electricity Board Vs. Suresh and others* and *Rudra Kumar Sain and others Vs. Union of India and others* . In the latter judgment the Supreme Court held in para-20,

“20. In the Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be "stop-gap or fortuitous or purely ad hoc". In his view of the matter, the reasoning and basis on which, the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be 'fortuitous/ad hoc/stop-gap' are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.”

The judgment reported in *Secretary, Haryana State Electricity Board Vs. Suresh and others* (2nd supra) would not be relevant for the purpose of the present controversy. Therefore, we have no doubt

in our mind that the learned single Judge was not right in directing the regularization of the petitioner. However, in the facts and circumstances of the case where we have found that the petitioner has been serving the department, either because of the orders of the department or of the Court's interventions, for more than 15 years now, therefore we direct that the writ petitioner be considered for a post, if available, for which she is qualified. With these modifications the writ appeal is disposed of. No costs.

BN J.

PSN J.

Dt. 26.11.2004

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ASST.REGISTRAR

To

- 1 The Chief Engineer, Electricity, A.P.S.E.Board, Warangal Zone, Warangal.
- 2 The Superintending Engineer, A.P.S.E.B., Warangal.
- 3 The Member Secretary, A.P.S.E.Board, vidyuth soudha, somajiguda,
Hyderabad.
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